Testimony of
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House Transportation and Infrastructure Committee
Subcommittee on Railroads
The Honorable Jack Quinn, Chairman
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Thank you Mr. Chairman and members of the committee for holding this hearing and for including the North Dakota Grain Dealers Association(NDGDA) as a witness. I'm Steve Strege and for nearly 24 years I have served as Executive Vice President of the North Dakota Grain Dealers Association headquartered in Fargo, North Dakota. This organization is a 93 year-old voluntary membership organization in which over 90% of our state's country grain elevators, large and small, hold membership. My testimony focuses on the transportation issues from the perspective of those country grain elevators. Others in agriculture and other industries face some of the same challenges our captive rail customers have. These elevators are the first point of delivery and sale for farmers' grain. They clean, condition, blend and ship that grain to mills, other food processors, and to export locations.

<u>BACKGROUND:</u>

Most country elevators across the nation are situated on only one railroad and are thus captive to that one railroad for rail services. There are literally thousands of country grain elevators. Some are fairly large companies; but most are relatively small. We have about 400 in our state. They are the funnel through which passes the single largest generator of new wealth in our state and surrounding areas – crop production.

In North Dakota and adjacent areas in Montana, South Dakota and Minnesota there is a more devastating aspect of captivity due to lack of effective competitive transportation modes. We are at the center of the North American continent, far from export ports and with no river barge transportation alternative. Trucking grain a few hundred to fifteen hundred miles to these destinations in the kinds of volumes we produce is both impractical and uneconomical. We are heavily dependent on rail movements. Traditionally 70-75 percent of North Dakota's production moves out of state by rail, and with some commodities and to some destinations it is in the 90- percent range. Any of you who eat high quality breads or pasta products, or who consume a beer now and then, can appreciate the fact that North Dakota is the leading state in the production of hard red spring wheat, durum wheat from which the pasta is made, and malting barley which is the essence of most beer.

In my state we have two Class I carriers, the Burlington Northern Santa Fe (BNSF) and the Canadian Pacific (CP), and three regional/shortlines. The Red River Valley and Western (RRVW) regional railroad is affiliated with the BNSF. CP has two shortline affiliates, the Dakota, Missouri Valley and Western (DMVW) and the Northern Plains Railroad (NPR). These regionals and shortlines usually provide customer-friendly service, but they are dependent on their Class I connections for car supply. When the Class I falls behind, so do its affiliates. These smaller railroads are not competition to the major carriers because their rates and many service practices are determined by the Class I's. These smaller railroads are also at more of a disadvantage when Class I's increase train size and car weight. The lines operated by these smaller railroads are usually the light weight rail segments with lighter traffic density than what the Class I retains.

Agriculture is inherently seasonal. Fall-seed crops in southern areas are harvested the next spring and summer; spring-seeded crops across the land are harvested in summer and fall. Agriculture also can be cyclical. Export market volumes are affected by crop production around the world, currency fluctuations, and the health of economies in importing nations. These things lead to peaks and valleys in demand for rail service. Yes, it would be nice to level this out, and some of that has happened. The railroads say they cannot build the proverbial "church for Easter Sunday". We don't expect them to. Yet many of our grain elevators have had to spend millions of dollars to gear up for sporadic quick loading of railcars.

I hope that what I have said so far establishes our need for rail service and the nation's need for the timely and economic delivery of our food products. We need healthy railroads providing good service. If we were to put our rail grain volume into trucks we'd have about 450,000 truckloads. Placed end-to-end those would extend approximately 5000 miles.

INVOLVEMENT WITH OTHER GROUPS

NDGDA is a member of the Alliance for Rail Competition (ARC), a diverse coalition of shippers that was formed five years ago to address concerns of rail-dependent shippers about railroad market power. These concerns span many rail-dependent shippers and industries. ARC's growing membership reflects the diversity of those interests: agriculture, coal, chemicals, consumer products, glass producers, industrial products, minerals and petrochemicals, and some of the trade associations that represent many of these groups, as well as port and industrial development authorities. ARC has teamed up with 12 other national organizations to combine our work efforts to bring rail competition back to this industry. These other organizations include: Agriculture Ocean Transportation Coalition, American Chemistry Council, American Public Power Association, Consumer United for Rail Equity, Edison Electric Institute, National Association of Wheat Growers, National Barley Growers Associations, National Petroleum Refiners Association, National Rural Electric Cooperative Association, Paper and Forest Industry Transportation Committee, The Fertilizer Institute, and The National Industrial Transportation League.

I have attached some additional comments from other ag-related entities that confirm that these problems are not confined to North Dakota. Many of these rail customers are urging Congress to get involved and support increased rail competition solutions.

CURRENT REGULATORY ENVIRONMENT

Mr. Chairman, your letter of invitation to this hearing said I should address the impact of the current railroad regulatory environment on railroads and shippers. Our view is that there is very little regulatory oversight exercised over the operation of freight railroads. Congress envisioned in the Staggers Act of 1980 that competition would balance interests between railroads and their customers. That Statute says, in part, that the policy of the United States Government is …" to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail…" and …"to maintain reasonable rates where there is an absence of effective competition…" Maximum competition, but in the absence of competition – reasonable rates. It appears to us that the regulatory agency has not kept this Congressional intent of balance in mind as much as it should have.

This lack of regulatory oversight on rates and service has allowed the railroads to pretty much do as they please and the captive shippers, their customers, suffer the consequences. As the railroad industry has consolidated from the pre-Staggers era of 40-50 "large" railroads to only a handful of behemoths today, the economic power that those remaining can have over customers, markets, and the nation's economy has been magnified. Meanwhile the shippers are left with less competitive options and having to comply with the railroad's latest product design. Many shippers, and shipper organizations, are reluctant to speak out loudly because they fear retribution.

We think a major problem in this whole scheme of things is that the STB, past and present, seems to believe that the revenue adequacy test for carriers is the most important measure for the railroad system, outweighing even the consequences of poor service or unjust freight car distribution programs. I don't claim to be an expert on railroad finances or this revenue adequacy test. But there seems to be a contradiction between railroads being found revenue inadequate by STB standards, while at the same time having record earnings per share and near record levels of stock prices as the Burlington Northern Santa Fe had in the last quarter of 2003.

<u>MARKET POWER OF RAILROADS IN PRICING</u>

Extremely high grain rail rates for captive shippers are evidence of the monopoly power of railroads in our region. . Many revenue to variable cost ratios on wheat movements from our region are in the 250-350 range (some up over 400), as compared to a jurisdictional threshold of unreasonable rates that has been established by both statute and the STB at 180 percent of variable cost.

A grain shipper in western North Dakota made the following observations and calculations: The BNSF 2002 Annual Report to shareholders shows revenue on all hauls per thousand ton miles is $18.10. His rate on wheat to Pacific Northwest export ports such as Seattle, Washington or Portland, Oregon yields $27.11 revenue per thousand ton miles, and his 52-car rate to Minneapolis, MN yields $47.64. Differential pricing to these extremes seems unreasonable.

The pricing philosophy of the BNSF is explained in the following comment from its Ag Products Vice President Steve Bobb at a U.S. Senate field hearing in Bismarck, ND in March 2002: "What we do as a rail transportation provider is look at the difference between value of the grain at the origin and value of the grain at destination, and try to determine the level of charges for transportation with margin for the elevators to operate and make money." In other words the BNSF is inserting itself as a participant in the marketing of grain instead of serving as a transportation provider, taking the maximum it can out of the middle. Discussion among Rail Customer Coalition members suggests that the railroads are moving into pricing in other commodities such as coal and chemical movements. Only when a railroad has such monopolistic power over so many of its origin and destination customers, is it in a position to extract for itself any efficiencies added to the system by those customers and force pricing within the market. We find this trend alarming and don't believe it is reasonable.

We saw further evidence of commodity price and market manipulations when the BNSF put in inverse rate structures which relocated non-traditional wheat into the PNW markets in 2001-2002, thereby lowering the price of wheat in the traditional areas of supply in the Dakotas and Montana. A similar program is reportedly being operated again.

<u>RAILROAD POWER DISPLAYED IN POLICIES AND PRACTICES</u>

Market power is also demonstrated by one-sided policies and practices of the railroads. In a Rail Issues Summary dated July 15, 2003 the National Grain and Feed Association (NGFA) said the following "*For the last two years, NGFA's Rail Shipper/Receiver Committee has engaged the railroads in additional dialogue on a number of current topics which agricultural rail customers believe need to be addressed. Among these issues (not all of which apply to all the carriers) are: 1) high deductibles and minimums on loss and damage claims; 2) rail seals and rail car security on food grade shipments and the impact of broken seals on loss and damage claims; 3) reciprocity and equity in credit terms between railroads and their customers; 4) storage charge policies on empty private cars when such additional cars are required, because of less than optimal rail service, to keep plants operating; 5) demurrage charges that are not related to the market value of rail cars; 6) fuel surcharges passed back to rail customers in ways that create inefficient transfers of risk (forcing added costs on the customer), and in some cases creating hidden rate increases; 7) mergers of railroads that have both improved access to on-line points and created higher* *barriers to accessing off-line points; 8) railroad pricing decisions that are not necessarily based upon different investments by customers in facilities and equipment; and 9) inverse pricing policies (lower rates for similar moves more distant from market on the same line) that can create unpredictable shifts in markets, making future rational investment decisions by affected shippers very challenging."*

In addition, NGFA has publicly expressed its concern that "…*there is no avenue of relief on "small" rate cases (for lower volume point-to-point shipping corridors which dominate in the agricultural sector), where the rail customer considers the railroad's capacity to differential price is being abused in establishing rates for a particular captive move. The rules adopted by the STB, have, through legal and financial barriers, virtually precluded any relief on rates with the exception of large coal rate cases. For agricultural shippers that confront excessive rates (about 30 percent of farm product shipments move at rates in excess of 180 percent of variable costs), there is no real remedy under the law as it is currently being applied. However, the STB has acknowledged there are regulatory issues to be addressed with smaller rate cases and is in the process of considering changes….*

In conclusion, NGFA remains concerned with how the market power of rail carriers affects the business relationship with agricultural and other shippers. We share the frustrations of other shipper organizations with the lack of protections under current law and the slow and extremely challenging processes for rail customers to obtain any meaningful form of relief through the STB."

Another example of one-sidedness in favor of the railroad is the contrast between demurrage penalties assessed by the railroad for delayed loading or unloading of grain cars and the penalties paid by railroads for late delivery of railcars. For example, on a BNSF non-shuttle Certificate of Transportation (COT) car order the railroad does not consider itself late until the 16th day after the want date. The order then goes on penalty and a one-time $400 per car rate credit will be given when the carload is shipped. But had the shipper held the car for 16 days he would have to pay 14 days of demurrage at $50 per day, total $700. If the penalty on the railroad continued to accumulate, as it does on the loader and unloader, there would be additional incentive for it to deliver the car on time. After the shipper loads the car and turns it over to the railroad, the railroad may let it sit on the shipper's track for additional days before being pulled to market. There is no payment to the shipper for this delay, in spite of increased costs to him.

Why aren't these penalties equal and offsetting? Because the railroad has chosen not to impose the same conditions on itself as it imposes on it customers.

RAILROAD MARKET POWER PICKING WINNERS AND LOSERS

Market power of railroads is also exhibited by railroad attempts to shape the grain marketing industry and domestic grain processing industry into fewer larger locations that fit the railroad's definition of efficiency. There are various sizes of grain shipments by rail. Not every railroad offers the same configurations, but generally speaking there are unit trains of 50-54 cars, unit trains of 25-27 cars, and so-called "single car" movements that are blocks of one to 24 cars. There are markets calling for these various sizes of shipments. The export market is usually fed with the larger trains. The domestic market uses more of a variety. Meeting stringent grain quality specifications and capturing associated quality premiums, are a strong suit of the smaller shipments.

Some railroads have been advocating and giving preference to "shuttle trains". In our area the pace of this has accelerated in the past five years with BNSF's 110-car shuttle trains. The Canadian Pacific has been encouraging its 100-car shuttles. The BNSF in particular is focusing more and more of its attention and resources on these shuttle trains. Shuttle trains have their place for certain crops and in certain markets. But they are not the end-all for everyone. And that brings me to a topic some of you are likely interested in – the grain shipping crisis of the past 6-8 months.

This past fall the BNSF concentrated so much of its resources on shuttle trains that while those were running on time or only a few days late, movements such as 52-54 car or 26-27 car trains, and smaller shipments, were at times 50 days behind. That is not a typo, that's 50 days. There were isolated reports of 60-70 days behind.

Also, in various stages throughout last fall and winter, the BNSF refused to accept further orders for 52-54 and 26-27-car trains through its top-of-the-line assured service Certificate of Transportation car distribution program. This denied an entire class of shippers access to even ordering that type of service. Meanwhile it continued to sell and service 110-car shuttle trains. One can see some justification in a railroad not taking further orders if it can't keep up with orders it already has. But the discrimination between sizes of shipments and shippers is very apparent and unreasonable in our opinion.

The BNSF blames these recent grain car distribution problems on there being a large crop. We're glad to have a large crop. It means more money in the pockets of our farmers, more grain to handle for our elevators, if they can get cars, and more business for the railroad. But a large crop does not explain why supposedly assured service purchased by grain elevators several months in advance of the harvest was not delivered on time. For example if in the month of July a railroad sells 1,000 carloads of pre-booked freight for delivery in October, a surge in demand to 2,000 cars for October does not explain why only 500 were delivered in October. That is a round number example of the situation.

The Canadian Pacific Railway also fell way behind in its service obligations. Up until about mid-January it was not as late as the BNSF, but since then it has fallen down even more. At a meeting in North Dakota on March 4, CP officials said it is 45 days behind on shuttle trains and 60 days behind on the rest. It expects to be caught up sometime in June.

The extremely poor service on any railroad costs grain elevators in a number of ways. There is interest expense on grain that has been bought from the farmer but can't be shipped. One large BNSF shipper in North Dakota said back in January that this cost alone was $2,300 per day for him. Grain elevators' credit lines are stretched to the maximum and beyond. Buyers can and do assess late delivery penalties for grain delivered 30-40-50-60 days late. Try to imagine operating a business with that kind of service. If there were options you would use them. But in our case for this service there is no option.

Farmers who have contracted their grain to these elevators also experience increased frustration and cost. They too can't get their grain delivered to get their money. Now we are into spring time and that means load restrictions on our roads and farmers soon getting busy with spring planting, thus unable to haul their grain. Load restrictions are decreased limits on allowable truck weights, announced and enforced by county and state road authorities to protect the surface and subgrades of our roads while they are thawing from the winter weather.

TRYING TO RESOLVE TRAIN SIZE SERVICE DISPARITIES

On December 16, 2003 North Dakota Governor John Hoeven, his Ag Policy Advisor, North Dakota Public Service Commission Chairman Tony Clark, a couple North Dakota grain elevator managers, and I, met with STB Chairman Roger Nober and several of his senior staff at the STB offices here in Washington, DC. We pointed out this disparity in service between shuttle trains and all others. We asked the STB what powers it had to intervene to restore some balance among rail customers. The majority of North Dakota rail customers were suffering the ill effects of this shift in resources.

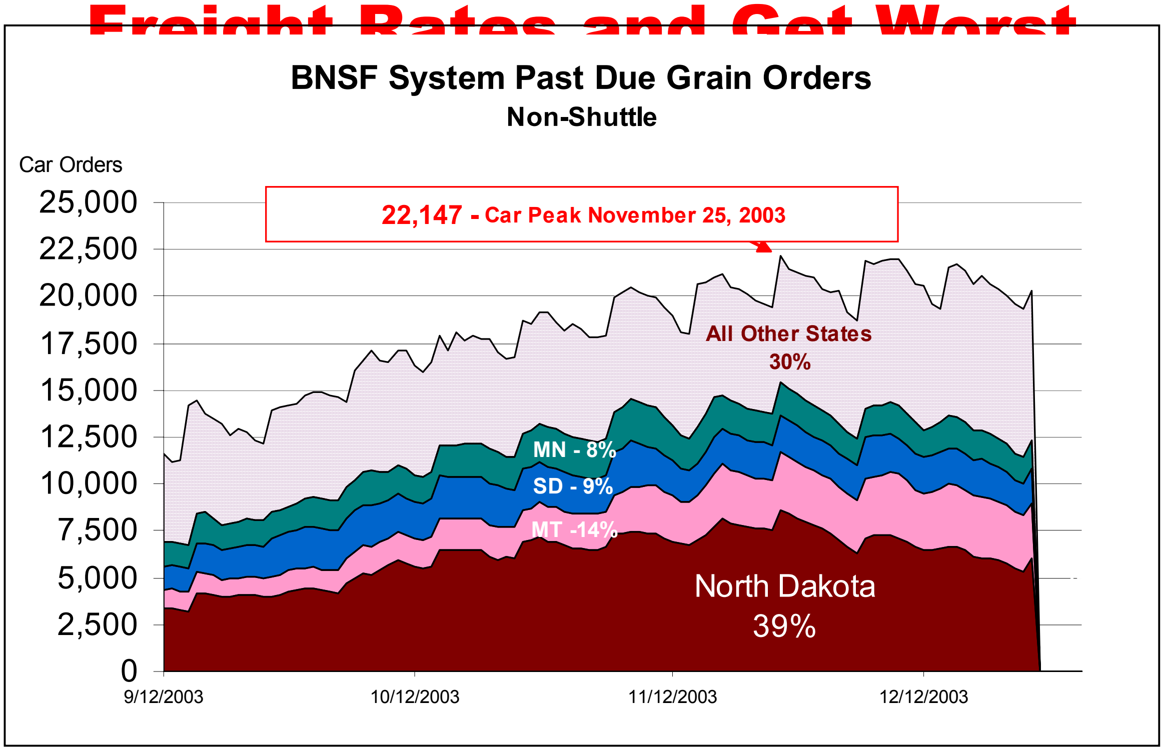
Chairman Nober offered to facilitate a meeting between the North Dakotans and BNSF leadership, and that took place on January 5, 2004, again back in the STB offices. Our Governor, PSC Chairman and others were there again. BNSF was represented by its President, Matt Rose, Ag Products Vice President Steve Bobb, Operations Vice President Carl Ice, and attorney Jeff Moreland.

Our entire Congressional delegation, Senators Dorgan and Conrad, and Congressman Pomeroy, also became involved through meetings and correspondence with BNSF officials, urging them to meet their obligations.

When North Dakota interests came to the STB with this problem we were not asking that cars be taken away from other states and given to us. We were seeking a return of some balance between service to the various train sizes. This would have been a benefit to shippers across the entire BNSF system who use those sizes of trains. Some shippers in our region who load the large shuttle trains also use the 52 and 26-car trains to access important markets. They were getting shuttles on time, but couldn't meet shipping obligations on the other sizes because the railroad wasn't providing cars for those. As stated above, these markets often command a premium price. Elevators that handle those sizes of trains were being discriminated against by the BNSF practices. There was evidence that the BNSF had actually diverted cars away from 52, 26 and single car service into shuttles. We wanted to reverse that. Our concern with the car distribution imbalance was not brought on by a large crop, but by BNSF's decision to move that crop in more profitable shuttle trains, while allowing its other shippers and car orders to lag far behind. We were not trying to create a preferential situation, but to cure one created by BNSF. We were trying to restore balance in car distribution. The STB should not have responded by implying that possession is 100% of the law, forcing those elevators and markets using only the smaller trains to continue on without cars.

Included in this testimony is a rather colorful chart that shows BNSF System Past Due Grain Orders, non-shuttle. This is the BNSF's own chart, presented at the January 5 STB meeting. I added the commentary across the top about captive areas paying the highest freight rates and getting the worst service. Thirty-nine percent of those past due orders were from North Dakota. Add in adjacent states, and the figure rises to 70 percent, on less than 25% of the BNSF system.

Captive Areas Pay The Highest Freight Rates and Get Worst



One of the BNSF's comments about this was that 40 percent of non-shuttle orders are from North Dakota and so 39 percent of past due orders is okay. But that ignores the dependence of our area, its crops, and its markets on the non-shuttle type of shipments. Our area has a greater diversity of crops than just about anywhere in the country. While shipments from corn belt states are mostly corn and soybeans, which more easily lend themselves to the larger shipments, North Dakota ranks number one in the production of spring wheat, durum wheat, barley, flax, sunflowers, dry edible beans, and canola. These crops and the markets they move into do not entirely fit the BNSF 110-car shuttle mold.

Instead of getting into more detail on that I will use the following example. It would likely be more efficient for grocery stores to sell potatoes in 100 lb sacks only. But customers want 5, 10 and 20 lb sacks, and so that is how potatoes are sold. If a grocery store went to a policy of 100 lb sacks on time and all others 30 days late, its customers would go elsewhere. That's the benefit of competition. But in the case of these railroad customers there was no competitive alternative so they could only sit and wait, absorbing associated costs in the process.

A rail carrier has a duty to provide transportation and service on reasonable request, and another duty to "furnish safe and adequate car service and establish, observe, and enforce reasonable rules and practices on car service" under Sections 11101 and 11121 of the ICC Termination Act of 1995. It is incorrect to regard that standard as being met merely because the carrier imposes systemwide practices. What is reasonable for corn shippers in Nebraska, or winter wheat shippers in Kansas, is not necessarily reasonable for spring wheat shippers in the northern plains, whose markets depend more heavily on serving 26 and 52 car customers than do the corn markets or the winter wheat markets. What BNSF did was openly discriminatory against a whole class of shippers, and this fell far more heavily on far more elevators and farmers in the northern plains than it did elsewhere, and that deserves consideration whenever "reasonableness" is the standard. The term "reasonable" does not just mean reasonable for the railroad.

The railroads may say that they move more grain more efficiently in these larger volumes. That might be true, but that does not entitle the railroad to put the shippers of mid-size and smaller trains out of business. The 26 and 52 car rates are plenty profitable for the railroad, and shippers pay through higher rates for the fact that these units are relatively less efficient than shuttles. If a railroad holds out to provide a profitable service, it should deliver, not abandon its common carrier obligation to those other shippers. They should not be bypassed just because they have not moved into the shuttle mold. By the way, most of those shippers loading 52 and 26 car trains are not "small". Some of them are quite large and among the most modern facilities around.

Calendar year 2003 grain shipments of 52 car trains from 52 car loading elevators in North Dakota on the BNSF were down slightly more than 50 percent from 2002. This was not those elevators' choice. It was more about squeezing shippers into the 100-pound sack mold.

STATE OWNERSHIP OF RAILROAD CARS

This concept has been discussed in the Dakotas. It could be risky and costly. No railroad can be compelled to use private cars. Even it did use them, it might not want to pay enough mileage allowance to cover the cost of ownership including maintenance. These cars would likely be the last to be put into service and the first to be idled. Unless the rental cost is minimal, the railroad wants to get use out of its own cars first.

SHIPPERS FEEL COMPELLED TO EXPAND

Many of the grain elevators that have converted to shuttle train loading in our region have done so because the railroads, particularly BNSF, are making it the only dependable source of grain car supply. The grain industry doesn't spend millions of dollars on new facilities unless it has to. It is true that lower rates are offered. It is reported that that some undisclosed other incentives are offered to certain facilities for certain lengths of time. Railroad claims that they are not pushing the issue are false.

If the country grain gathering system is converted to all shuttle loaders, for the railroad's convenience and greater profits, there will be no reason for advantageous rates to be offered. Meanwhile the farmers will have to haul their grain much farther to a declining number of competitive locations, and severely damaging our road systems. The efficiency gains will go to the railroad, and the increased burdens will fall on its customers and the States. This is economic strangulation of significant agricultural areas of the nation by a few railroad companies that wield enormous economic power granted to it by the federal government. If you believe that might makes right, then this might be okay. If the railroad franchises were granted with the understanding that they should continue to operate in the public interest, then it is not.

EMERGING ECONOMIC TRENDS AND THE EFFECTS ON RAIL CUSTOMERS

Mr. Chairman, another topic mentioned in your letter of invitation is emerging economic trends in the railroad and shipping industries. From our part of the country, and I think in the grain business all across the nation, one of the trends the railroads are advocating is fewer but larger locations and shipments. I've already explained that in the train size service examples above. It is the "bigger must always be better" philosophy. We don't agree with it. It sometimes leaves out important smaller players and is often contradictory of what end-use markets really want. But it is the railroads' way and without some change in approach those rail service users who don't fall in line will simply lose their service.

NDGDA BELIEVES IN FREE ENTERPRISE AND FREE MARKETS

I want to emphasize that our organization and its members support free enterprise and free markets. But there's nothing free about monopoly and oligopoly control of customers, markets, industries and regions by one or two railroads.

IN CONCLUSION

Through their use of legislative and regulatory powers the Congress and the Surface Transportation Board have allowed, or maybe in some cases promoted, this concentration of great economic power in the hands of a few large railroad companies. We believe it is now the Congress's and the STB's responsibility to rein-in the abuses visited upon captive rail customers by those railroads. In this testimony I have given evidence of service and rate problems and abuse from market domination by railroads. We believe that the freight rail marketplace does not behave like a marketplace at all. They are given the federal protection of the anti-trust exemptions. In addition, we believe that over the years the regulatory mechanism has skewed what was the intent of Congress when it passed the Staggers Act in 1980.

We believe that Congress needs to act on necessary reforms now, to let competitive forces govern railroad-customer relations as much as possible, but use oversight and restrictions to check abuses where effective competition is not present. Rail customers, captive or not, and the public want and need a financially strong railroad industry, but one that is restrained from abusing captive shippers.

Railroads can be expected to act in their own best interests. From that perspective, it is understandable that they wish to move grain volumes from the fewest number of origins possible using the least number of railcars possible for the maximum revenue possible. The problem lies in that railroads have gotten so huge and so dominant in some areas that no effective competitive transportation keeps their rates and policies in check. Competitive choice is a scarce commodity in the Northern Plains, and elsewhere, and that is why more assertive Congressional and STB oversight must act as a proxy for competition.

Although Northern Plains shippers pay grain rates that are three and four times the railroad's variable costs – probably the highest margins for grain rates anywhere in the United States – there is no adequate remedy to seek a reduction of those rates before the STB, as Chairman Nober has acknowledged. This is an outrageous situation, considering that the Staggers Act has been law for nearly 25 years, during which time we have essentially been precluded from challenging these excessive rates.

To add insult to injury, although we provide the highest rates of return of any unprocessed grain moving on the railroad, most grain elevators in our region receive just about the worst service. Shuttle train shippers represent less than 10 percent of the grain elevators in my state, and the other 90 percent of our elevators have been waiting for months for BNSF railcars. On the Canadian Pacific the pain is spread more evenly among shipment sizes, with everyone being in the range of 50 days behind. The fact that railroads will eventually catch up does not undue the great economic harm done to rail customers.

The STB's responsibility is not to only railroads, or to bushels of grain; it extends to shippers, receivers and markets as well. And that doesn't mean only those who use shuttle trains. A railroad that takes resources from the majority of its shippers, to concentrate them into what it feels is its most efficient service, is ignoring its common carrier obligation to those other shippers. Those other shippers have paid their dues over the years with business volume to the railroad.

Regarding our particular situation, the BNSF may argue that, in concentrating its equipment in shuttle trains, it acted uniformly throughout its system. In those regions of the country where shuttle trains are used to a greater extent than in our area, this BNSF policy brings about less of a change in car distribution than for us, where 90 percent of the elevators are not shuttle facilities. That distinction was overlooked by the STB when we brought our car distribution problems to its attention this past winter. Taking cars from profitable 26 and 52-car trains for smaller shippers who constitute 90 percent of the rail grain customer base in North Dakota is not reasonable when there is no real crisis to solve. BNSF was not trying to move grain more quickly to save animals and poultry from starving. It did, however, manage to shift grain capacity to its most profitable service.

The STB appears to take the position that it will not respond to a car distribution complaint by restoring balance in among shippers. That's similar to saying it would be stealing for the police to return stolen property to its owner. This STB policy literally closes the door on any efforts by smaller grain shippers to retain the resources and service that the railroad decides to shift into use by larger shippers. Unfortunately, that leaves most North Dakota grain shippers without either an effective means to bring down the high railroad rates we pay or to obtain improved service.

The North Dakota Grain Dealers Association shares with ARC, the Rail Customers Coalition and other concerned parties the view that something substantive must be done. The day has long since passed when anyone can credibly say that there is no problem, or that things are just great as they are. For you who make policy to avoid acting, will only produce a larger problem for the country as time passes. And given time, the problems will surely be larger; they will be more complex and they will be more expensive to fix. The time to begin solving this is now.

COMMENTS FROM RALPH PECK, MONTANA DEPT OF AG DTR REGARDING BNSF GRAIN RATE INCREASES IN JANUARY 2004

The company(BNSF) has decided to increase its rates significantly at a time when people are complaining that their service is as bad as it's been for years. What they are doing is boosting their bottom line on the backs of captive shippers-specifically grain farmers in the state of Montana.

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COMMENTS FROM NEBRASKA GRAIN & FEEDASSOCITION EXECUTIVE VICE PRESIDENT PAT PTACEK:

I am starting to hear from many small or single car shippers who had 5 - 10 cars ordered per week since October 2003, all sold FOB, and who have not yet or are just starting to see a few cars thrown their way from time to time. Some of these guys are loosing their rail market all together from this poor service, or their own banks are threatening to pull their line of credit because they are sitting on sold but not delivered corn.

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COMMENTS FROM MINNESOTA GRAIN AND FEED ASSOCATION EXECUTIVE DIRECTOR BOB ZELENKA:

The situation hasn't changed much in Minnesota since late fall and early winter for the less-than-shuttle loaders. Some are still up to two months behind on BNSF and CP Rail. According to our survey the average negative impact is over $300,000 per affected grain elevator firm.

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COMMENTS FROM IOWA GRAIN AND FEED ASSOCIATION PRESIDENT ED BEAMAN:

We remain concerned with the same issues as we have had; poor "on time" delivery of cars, lack of access in some of the smaller 20 car and less facilities, lack of or poor upgrades to the tracks, limited competition, charges to the elevator for failure to complete loading per the agreements even though the train may have been very late in arrival at the facility. Peak demand movements place a strain on railroads. If we could find a way to level out I think both our members and railroads would be more satisfied.

COMMENTS FROM SUE HAYS,WILD BIRD FOOD INDUSTRY ASSOCIATION

We are a trade association whose membership includes companies in New York, Wisconsin, Florida, Kansas, California, Pennsylvania, Missouri, Oregon, Maryland, Iowa, Indiana, Illinois, and Minnesota, as well as other states.

This industry perhaps exemplifies the gravity of the lack of service by the US railroads. These companies are small businesses. They do not ship quantities to use the unit train systems which the railroads are forcing on us. These companies need single cars to perhaps 5 cars.

The point I want to make here is that they need the rail cars delivered, and that's not happening now. The result is financial harm to these businesses and the families affected by the megalopoly the US railroads have been allowed to become. These small companies ask that you act to provide remedy to this situation as soon as possible.

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